

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,
Plaintiff,
v.
VALLEY STATE PRISON, et al.,
Defendants.

No. 1:19-CV-01797-ADA-GSA (PC)
ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION OF ORDER
GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT
(ECF No. 68)

Plaintiff Nathaniel Marcus Gann ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On October 27, 2022, the Court granted Defendants' motion for summary judgment based on Plaintiff's failure to exhaust administrative remedies, judgment was entered, and the case was closed. (ECF Nos. 66, 67.)

On November 30, 2022, Plaintiff filed a motion for rehearing and notice of intent to appeal. (ECF No. 68.) The Court construes Plaintiff's motion for rehearing as a request for reconsideration of the order issued on October 27, 2022.

I. MOTION FOR RECONSIDERATION

The Court may grant reconsideration of a final judgment under Federal Rules of Civil Procedure 59(e) and 60. Generally, a motion for reconsideration of a final judgment is appropriately brought under Rule 59(e). *Harris v. Placer Cnty. Jail*, No. 219CV01139MCEDMC, 2020 WL 6498966, at *1 (E.D. Cal. July 6, 2020) (citing *see Backlund v. Barnhart*, 778 F.2d 1386,

1 1388 (9th Cir. 1985) (discussing reconsideration of summary judgment); *see also Schroeder v.*
 2 *McDonald*, 55 F.3d 454, 458-59 (9th Cir. 1995)). The motion must be filed no later than twenty-
 3 eight (28) days after entry of the judgment.¹ See Fed. R. Civ. P. 59(e). Under Rule 59(e), three
 4 grounds may justify reconsideration: (1) an intervening change in controlling law; (2) the
 5 availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice.²
 6 *Harris*, 20 WL 6498966, at *1 (citing *see Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F.
 7 Supp. 656, 665 (E.D. Cal. 1986), *rev'd in part on other grounds*, 828 F.2d 514 (9th Cir. 1987), *cert.*
 8 *denied*, 486 U.S. 1015 (1988); *see also* 389 Orange Street Partners v. Arnold, 179 F.3d 656, 665
 9 (9th Cir. 1999); *accord* School Dist. No. 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)).

10 Rule 60(b) allows the Court to relieve a party from an order for “(1) mistake, inadvertence,
 11 surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could
 12 not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether
 13 previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4)
 14 the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an
 15 earlier judgment that has been reversed or vacated; or applying it prospectively is no longer
 16 equitable; or (6) any other reason that justifies relief.” Fed. R. Civ. P. 60(b). Rule 60(b)(6) “is to
 17 be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only
 18 where extraordinary circumstances . . .” exist. *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008)
 19 (internal quotations marks and citation omitted). The moving party “must demonstrate both injury
 20 and circumstances beyond his control . . .” *Id.* (internal quotation marks and citation omitted). In
 21 seeking reconsideration of an order, Local Rule 230(j) requires Plaintiff to show “what new or
 22 different facts or circumstances are claimed to exist which did not exist or were not shown upon
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24 ¹ Pursuant to *Houston v. Lack*, 487 U.S. 266 (1988), for *pro se* prisoner litigants seeking
 25 reconsideration, the court calculates the 28-day period from the date the motion was delivered to
 26 prison authorities for mailing to the court. Otherwise, the 28-day period is calculated based on the
 27 date the motion for reconsideration is actually filed.

28 ² If reconsideration is sought based on new evidence which could not have been discovered through
 due diligence in time to move for reconsideration under Rule 59(e), relief may be available
 under Federal Rule of Civil Procedure 60(b)(2). A motion under Rule 60(b)(2) may not be brought
 more than one year after entry of judgment.

1 such prior motion, or what other grounds exist for the motion.”

2 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
3 unless the district court is presented with newly discovered evidence, committed clear error, or if
4 there is an intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos*
5 *Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). “A party seeking reconsideration must
6 show more than a disagreement with the Court’s decision, and recapitulation of the cases and
7 arguments considered by the court before rendering its original decision fails to carry the moving
8 party’s burden.” *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001). To
9 succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to
10 reverse its prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F.Supp. 656,
11 665 (E.D. Cal. 1986).

12 At the outset, the Court finds Plaintiff’s motion timely under Rules 59(e) and Rule 60. The
13 case was dismissed on October 27, 2022, (ECF No. 66), and Plaintiff’s motion for reconsideration
14 was delivered to prison authorities for mailing twenty-seven days later on November 23, 2022.
15 (ECF No. 68 at 4.)

16 Plaintiff objects to the Court’s decision to grant Defendants’ motion for summary judgment
17 on October 27, 2022, because Plaintiff believes the Court relied on faulty information. First, he
18 argues that his first administrative appeal was improperly cancelled, the cancellation was
19 exhausted, and then there were no further remedies available under CDCR regulations. Second, he
20 argues that the follow-up appeal was improperly rejected as duplicative. Finally, he argues that his
21 original group appeal should not have been cancelled in the first place.

22 Plaintiff does not present the Court with any newly discovered evidence or shows that the
23 Court committed clear error in its ruling. Nor does he point to any intervening change in controlling
24 law. Instead, Plaintiff merely disagrees with the Court’s decision and recapitulates what was
25 already considered by the Court in rendering its decision. Accordingly, Plaintiff fails to show any
26 reason that the Court should reconsider its prior order, and the Court will deny his motion for
27 reconsideration.

28 **II. CONCLUSION**

1 Accordingly,

2 1. Plaintiff's motion for reconsideration, (ECF No. 68), filed on November 30, 2022, is
3 DENIED.

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6 IT IS SO ORDERED.

7 Dated: January 30, 2023



UNITED STATES DISTRICT JUDGE

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